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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. —

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

BLACK BALL FREIGHT SERVICE, INC., ET AL., APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the district court is reported at 298 F. Supp. 1006. The orders of the Interstate Commerce Commission are unreported. The above items are reproduced in Appendices A, C, and E to the Jurisdictional Statement filed by American Farm Lines in the companion appeal from the same district court judgment in No. 369, hereinafter referred to as "A.F.L. J.S. App."

JURISDICTION

The judgment of the three-judge court was entered on March 26, 1969. The notice of appeal was filed on

May 26, 1969.[1] The jurisdiction of this Court is invoked under 28 U.S.C. 1253 and 2101(b). *Pan-Atlantic Steamship Corp.* v. *Atlantic Coast Line R.R. Co.*, 353 U.S. 436 (1957), and *American Trucking Associations, Inc.* v. *United States*, 364 U.S. 1.

STATUTES INVOLVED

Primarily involved are Section 210a(a) of the Interstate Commerce Act (49 U.S.C. 310a(a)) and subsections (8) and (9) of the Commission's Temporary Authority Rules (49 C.F.R. 1131.2(c) (8 & 9)). These Rules, as well as the Commission's General Rules of Practice, are set forth in pertinent part in Appendix A hereto. Section 210a(a) of the Act provides, in pertinent part:

> To enable the provision of service for which there is an immediate and urgent need to a point or points within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common or a contract carrier by motor vehicle, as the case may be. * * *

QUESTIONS PRESENTED

An application filed with the Interstate Commerce Commission under Section 210a(a) of the Interstate Commerce Act (49 U.S.C. 310a(a)) sought temporary

[1] Since the sixtieth day after entry of judgment was May 25, 1969, a Sunday, filing of the notice of appeal on the following Monday, May 26, 1969, was timely. See Rule 34(1), Rules of this Court.

authority to perform motor common carrier transportation [2] to meet the imperative need of the Department of Defense for an expedited and flexible single-line irregular-route service in order to discharge its responsibility for conduct of the Nation's defense. When the Commission declined to stay its initial grant of authority pending reconsideration, a single judge of the statutory three-judge district court enjoined operation of the Commission's order. The Commission reopened the proceeding, received additional evidence and concluded to grant the authority since DOD had an immediate and urgent need for the proposed single-line service which no existing carriers were capable of rendering through joint-line operations. The district court, in setting aside the grant of authority, held that the Commission lacked jurisdiction to reopen the proceedings after the court had asserted its judicial review jurisdiction and issued a restraining order staying the initial order of the Commission (A.F.L. J.S. App. A, p. 8a). The district court additionally concluded that, even if the Commission had such jurisdiction, the evidence received would not meet the requirements of categories (8) and (9) of the Commission's Temporary Authority Rule 49 C.F.R. 1131.2(c)(8 & 9) [A.F.L. J.S. App. A, pp. 11a–12a]. Specifically, these rules require that supporting shippers indicate whether efforts have been made to obtain the needed service from existing carriers, and the results of such efforts.[3] [App. A, p. 20]

[2] Of general commodities, including Class A and B explosives, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas, on the

The questions presented are: (1) Whether the Commission is required, as a matter of law, to reject a temporary authority application under 49 U.S.C. 310a(a) because the supporting shipper's statement did not literally conform to the Commission's Temporary Authority Rules (49 C.F.R. 1131.2(c)(8–9)) even though it contained all information necessary to permit the exercise of the discretionary authority conferred by the statute; and (2) Whether the District Court erred as a matter of law in concluding that the Commission lacked jurisdiction to reopen the administrative proceeding pending before it after proceedings for review of the Commission's initial order had been commenced and the court had stayed that order.

STATEMENT

This appeal concerns the imposition by a district court of strict evidentiary standards for the Inter-

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one hand, and, on the other, points in Washington, California, Nevada, Utah, and Arizona.

[3] DOD, the sole supporting shipper, stated that it imperatively requires service over the most direct routes in a minimum transit time (A.F.L. J.S. App. D, pp. 22a, 28a–29a, 30a–31a); that it has experienced inefficient transportation from existing carriers' circuitous joint-or-multiple-line services which have been deficient for its needs, giving the reasons therefor and examples of excessive times in transit (*ibid.*, pp. 22a–24a, 27a–30a, 31a–32a); that no carrier possesses the complete single-line geographical and commodity authority or service capable of meeting its needs (*ibid.*, pp. 25a–27a, 28a–29a, 31a–32a); and that the proposed service will be used to complement rather than replace existing services (*ibid.*, pp. 31a, 33a). While the protests of existing carriers claimed adequacy of their joint-line services, they substantiated DOD's statement that no carrier possesses the complete authority sought.

state Commerce Commission to follow in exercising its Section 210a(a) authority to award, "in its discretion and without hearings or other proceedings," temporary authority to conduct motor common carrier service for which there is an immediate and urgent need which existing carriers cannot meet. This case arises out of the following undisputed factual situation. For many years DOD was forced to depend upon a motor carrier transportation system which is largely comprised of carriers holding bits and pieces of commodity and geographical authority which must be joined and operated over circuitous regular routes. This system precluded the rendering of expeditious and direct service with its inherent savings in time and money. DOD had no practical choice but to rely entirely on this existing service which impeded its efforts to efficiently and economically procure and distribute the vast quantities of military as well as other supplies which were required for implementation of the Nation's policies related to the national defense.

The situation changed, however, in the latter part of 1966 when American Farm Lines and a number of other agricultural cooperative associations began soliciting DOD traffic for movement pursuant to the exemption from economic regulation provided by Section 203(b)(5) of the Interstate Commerce Act (49 U.S.C. 303(b)(5)). See *N.W. Agricultural Co-op* v. *Interstate Commerce Commission,* 350 F. 2d 252 (9th Cir., 1965, *cert. denied,* 382 U.S. 1011 (1966). Upon using AFL's service, DOD immedi-

ately discovered that it was superior to that available from existing carriers because it regularly provided service over the most direct routes from all points in broad multi-state areas which resulted in precisely timed deliveries and minimization of time in transit.

When injunctions issued by the United States District Court for the Western District of Oklahoma[4] precluded AFL from rendering much of the completely flexible service previously provided, and legislation amending 49 U.S.C. 303(b)(5) limited more drastically the ability of AFL to provide the same flexible service in the future,[5] DOD supported AFL's application for motor carrier temporary authority, and is now supporting a similar application for permanent authority (A.F.L. J.S. App. D, p. 33a).

Upon consideration of the conflicting claims in the reopened proceeding, the Commission found (A.F.L. J.S. App. E, pp. 35a–37a) that DOD, "in discharging its responsibility for the conduct of the Nation's defense, * * * imperatively requires service over the most direct routes in a minimum transit time; that it has experienced inefficient and circuitous joint-line

[4] *Munitions Carriers Conference, Inc.* v. *American Farm Lines*, Civil Action No. 67–487 (W.D. Okla. Feb. 20 and May 28, 1968).

[5] P.L. 90–433 (82 Stat. 448 and 449), July 26, 1968, restricts interstate transportation of cooperative associations for nonmembers "to that which is incidental to its primary transportation operation and necessary for its effective performance and shall in no event exceed 15 per centum of its total interstate transportation services in any fiscal year, measured in terms of tonnage."

transportation by the use of existing carriers' services which have been deficient for its needs, particularly relating to the coordination of the arrival of inbound shipments [of component parts] with the production schedules of manufacturing installations and the departure times and transhipment dates of matters and materials necessary to the national defense." Continuing, the Commission found that DOD "has attempted but has been unable to obtain the required and necessary type of service" from existing carriers; "knows of no carrier in a position to meet its needs" and that the record contains no evidence "to establish that any of the protesting carriers provide a service to meet" the needs of DOD. In granting the authority sought, the Commission concluded that, "in balancing the scales of public interest, it is necessary to assure that the Government's immediate and urgent transportation requirement be met by an expedited and flexible [single-line] service which will be used to complement rather than replace existing services."

The Court held that the Commission lacked jurisdiction, without prior leave of court, to reopen the proceeding to receive additional evidence or take any action which "might nullify or impair the jurisdiction of this court over the ICC [initial] order under review." [A.F.L. J.S. App. A, p. 8a]. The court also held that, in failing to show any efforts by DOD "to obtain from existing carriers the service AFL seeks to provide, or the identity of any existing carriers who failed or refused to provide the needed service

or the reason given for any such failure or refusal," the evidence did not meet the requirements of Temporary Authority Rule 49 C.F.R. 1131.2(c)(8 & 9). In the court's view, the Temporary Authority Rules are mandatory and require full compliance with every provision thereof before the Commission may exercise its authority under 49 U.S.C. 310a(a). [A.F.L. J.S. App. A, p. 11a]. Accordingly, the district court held that each grant of temporary authority was arbitrary, capricious, erroneous in law, null and void and entered a stay order to continue in effect until further order of the court. [A.F.L. J.S. App. A, p. 12a].

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

This appeal raises important questions of law which, as decided by the district court, are in conflict with decisions of this Court as well as other lower Federal courts and have significantly impaired the Commission's ability to administer Section 210a(a) effectively in acting upon the large number of applications for temporary authority filed annually.[6] Plenary consideration by this Court is thus warranted.

1. The district court erred in holding that the Commission was required as a matter of law to reject AFL's application because the statement of the supporting shipper did not literally conform to the requirement of the Temporary Authority Rules that shippers indicate whether efforts have been made to obtain the needed service from existing carriers, and

[6] In 1968, over 6,000 applications were filed, see I.C.C. Annual Report 1968, p. 126.

the results of such efforts. In viewing DOD's failure to literally comply with the "mandatory" requirements of this rule as a fatal defect, the district court exalts form over substance and requires the supporting shipper to perform the futile gesture of appealing to existing carriers for service which they do not and can not perform under their franchises.

This Court recently rejected the same contention in affirming a judgment of the District Court for the Eastern District of Virginia in *Estes Express Lines* v. *United States,* 292 F. Supp. 842, affirmed 22 L.Ed. 2d 673. There, as here, the supporting shippers sought a service differing in both kind and quality from that provided by existing carriers. In *Estes,* the district court held that, in light of the record as a whole, items (8) and (9) of the Temporary Authority Rules were "reasonably answered" when each supporting shipper stated that it was currently obtaining the needed service from the Railway Express Agency and had no knowledge of any carrier other than REA that could offer adequate express service (292 F. Supp. at 844). In this case, the district court rejected the more comprehensive statement of DOD (*supra,* p. 4, fn. 3) and deprived the Commission of its jurisdiction to exercise its authority under 49 U.S.C. 310a (a) simply because there was no "full compliance with all mandatory ICC rules." (A.F.L. J.S. App. A, p. 11a).

Whether these Rules are binding on the Commission or merely state general guidelines designed to implement the statute and facilitate the Commission's

handling of applications for temporary authority, they reflect no intention to reduce or relinquish the Commission's statutory power to issue temporary certificates where ample evidence appears in the record. *Roadway Express, Inc.* v. *United States,* 263 F. Supp. 154, 159 (N.D. Ohio, 1966). If permitted to stand, the district court's decision will impose more rigid standards on the grant of temporary authority than the summary procedures envisioned by the statute[7] (49 U.S.C. 310a(a)). So long as there is reasonable compliance with the rules and any evidence in the limited record before it, conflicting though it may be, the statute contemplates that the Commission should remain free to accept the claims of immediate and urgent need for service and may grant temporary authority until it can, after full evidentiary hearing, determine whether permanent authority should be awarded under 49 U.S.C. 307. *Union Cartage Co.* v. *United States,* 244 F. Supp. 1005, 1007 (D. Mass., 1965).

Reasonable rather than literal compliance with rules designed to implement statutory authority[8] is

[7] The courts have consistently held that the test of validity of a temporary authority order is not whether it is supported by substantial evidence, as is the case where an order granting permanent authority is under review, but rather is limited to a determination of whether the Commission has legal authority and any evidence to act as it did in the circumstances presented. *Roadway Exp., Inc.* v. *United States, supra,* at p. 157; *Merchants Delivery Co.* v. *United States,* 265 F. Supp. 669, 671–2 (W.D. Mo., 1967); and *Bert Hussey* v. *United States,* 271 F. Supp. 650, 653–4 (N.D. Calif., 1965).

[8] See Policy Statement of the Commission, dated January 23, 1968, quoted ~~the~~ *Acme Cartage Co.* v. *United States,* 290 F. Supp. 453, 456 n. 4 (W.D. Wash., 1968).

compelled as a practical matter. As another district recently observed, correctly we submit, in *Superior Trucking Co., Inc.* v. *United States,* 1969 Fed. Car. Cases ¶ 82,108 (N.D. Ga., June 3, 1969):

> * * * The regulations were designed to facilitate the Commission's findings of an urgent and unmet need; if facts supporting these findings exist in the record, the fact that the regulations were not strictly followed should be irrelevant. It is particularly inappropriate to strictly bind an agency to regulations made under a statute designed to encourage summary procedures. The Commission's regulations should not be read to impose more rigid standards on the grant of a temporary authority than the summary procedures envisioned by § 310a(a) of the statute. Moreover, the detailed nature of the information requested in subsections (8) and (9) of the regulation would, in effect, require shippers to keep continuous records of every call they made to carriers * * *. This could hardly be expected of shippers, especially when there would be no reason to think in advance that such detailed records would ever be of any use. Of course, it would help the ICC if such data were available, and it is for this reason that they have included such a request in their regulations. But to think that such requests, if not possible of fulfillment, should void a proceeding *ipso facto* would be to effectively eliminate temporary authorities.

This logic applies with equal force in this case where the shipper reasonably answered the require-

ments of the rules and clearly established the inadequacies of existing multiple-line services.[9] Existing carriers' claims of capability to render the needed service present questions of fact for determination by the Commission. Yet, the court below substituted its own view with respect to the merits of conflicting claims and prohibited the body charged by Congress with this duty from making any determination. See *United States* v. *Pierce Auto Freight Lines*, 327 U.S. 515, 535–536 (1946). And if, as the decision of the district court implies, existing carriers must be afforded the first opportunity to meet the needs of a shipper on a piecemeal rather than a complete basis, it is clearly wrong since the statutory provisions of 49 U.S.C. 310a(a) do not require automatic denial of authority in such circumstances. *Cf., United States* v. *Dixie Highway Express*, 389 U.S. 409 (1967).

In sum, the district court's holding that there must be full compliance with all mandatory Temporary Authority Rules before the Commission may exercise its discretionary authority under 49 U.S.C. 310a(a) is erroneous and will seriously impede the Commission in providing temporary service to meet urgent shipper needs.

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[9] 49 C.F.R. 1131.4(b)(4) provides that a desire for single-line service is insufficient to grant temporary authority—"a grant * * * to effectuate single-line service will be authorized only when it is clearly established that the carriers providing multiple-line service are not capable of, or have failed in, meeting the reasonable immediate and urgent needs of shippers * * *." (App. A, p. 21).

2. Although the district court placed major emphasis on the question of full compliance with the Temporary Authority Rules, it additionally held that the Commission lacked jurisdiction to reopen the administrative proceeding because the Court had asserted judicial review jurisdiction and restrained the effectiveness of an initial grant of authority which the Commission had declined to stay pending reconsideration. (A.F.L. J.S. App. A, p. 8a).[10] In so holding, the district court again departed from decisions of this Court, as well as other courts, and misconceived not only the provisions of Section 17(7) and the Commission's Rules of Practice, but also the proper relationship between the courts and the Commission in matters affecting transportation policy. *Cf., United States* v. *Western Pacific R. Co.,* 352 U.S. 59, 63 (1956).

Section 17(7) of the Interstate Commerce Act (49 U.S.C. 17(7)) gives the Commission continuing jurisdiction over its orders and empowers it to rehear or reconsider and to rescind, change or modify them at any time for the purpose of correcting any error or injustice.[11] *Baldwin* v. *Scott County Milling Co.,* 307 U.S.

[10] The district court stated, "[e]ven if ICC had jurisdiction to reopen the ICC proceeding and to consider the [DOD] verified statement, it would not meet the requirements of categories (8) and (9) of ICC Rule 49 C.F.R. 1131.2(c)."

[11] Section 17(7), made applicable to motor carrier matters by 49 U.S.C. 305(h), specifically provides, in pertinent part:

"If after rehearing, reargument, or reconsideration of an * * * order * * * of a division * * * it shall appear that the original * * * order * * * is in any respect unjust or unwarranted,

478, 483–4 (1939); *Sprague* v. *Woll,* 122 F. 2d 128, 130 (7th Cir., 1941), *cert. denied,* 314 U.S. 669; *Davis, Adm. Law Treatise,* Section 18.09, pp. 606 and 610. Indeed, even apart from expressed statutory authority, the power to rehear, reconsider and revise is necessarily inherent in the power to decide if a decision-making body is to be able to effectively carry out the purposes of the statute which it administers. See, *e.g., Confederated Tribes* v. *United States,* 20 Ad. L. 2d 164, 165 (Ct. Clms., 1966). *Albertson* v. *F.C.C.,* 88 F. 2d 397, 399 (D.C. Cir., 1950); *cf., Delta Airlines* v. *C.A.B.,* 280 F. 2d 43, 46–47 (2d Cir., 1960), aff'd 367 U.S. 316 (1961). The cases upholding the Commission's continuing jurisdiction to reopen a proceeding while judicial review actions were pending are legion,[12] some with but most without comment.[13] See, *e.g., Aberdeen & Rockfish R.R.* v. *United States,* 270 F. Supp. 695, 705 (E.D. La., 1967), aff'd as modified on other grounds, 393 U.S. 87 (1968) and *United States* v. *Chicago, M., St. P. & P. R. Co.,* 294 U.S. 499. And the same principle has been applied in the case of other departments and agencies of Government.[14] Thus, the district court's judgment conflicts with a consistently applied and well-established principle.

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the Commission or appellate division may reverse, change, or modify the same accordingly * * *." (App. A, p. 19).

Compare Section 10(e) of the National Labor Relations Act (29 U.S.C. 160(e)) and Section 19 of the Natural Gas Act (15 U.S.C. 717 r) which permit reopening any time prior to filing of the administrative record in the reviewing court.

[12] From 1952 through 1968, there were 65 such cases.

[13] In one case, *Atchison, T. & S.F. Ry. Co.* v. *United States,* 231 F. Supp. 422, 426–429 (N.D. Ill., 1964), the Court criti-

More importantly, both logic and sound policy require that the judgment below be reversed. It was not urged below that the Commission's initial grant of authority was a final order (A.F.L. J.S. App. A pp. 8a, 10a). Rather, it was correctly pointed out that when the Commission declined to stay the effectiveness of its initial grant of authority pending rehearing and reconsideration,[15] the district court had juris-

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cized the Commission for reopening while a judicial review action was pending because of possible inconvenience to the judges and a denial of due process. On the facts of the case, however, the court held that lack of a prior request or notice to the court was not sufficient to void the reopening, particularly where there was no prejudice.

[14] *Donaldson* v. *Read Magazine*, 333 U.S. 178, 182–4 (1948), involving a fraud order issued by the Postmaster General; *Evans* v. *F.C.C.*, 113 F. 2d 166, 169 (D.C. Cir., 1940); *Frontier Airlines, Inc.* v. *C.A.B.*, 259 F. 2d 808 (D.C. Cir., 1958); *Anchor Line* v. *F.M.C.*, 299 F. 2d 124, 125 (D.C. Cir., 1962).

[15] The district court is clearly wrong in holding (1) that petitions for reconsideration are not authorized by Rule 49 C.F.R. 1131.6 and (2) that the September order of the Commission was administratively final by virtue of Rule 49 C.F.R. 1100.101(a)(2). (A.F.L. J.S. App. A, p. 9a). Rule 1131.6 specifically states that the right to file petitions are "pursuant to and in accordance with the Commission's General and Special Rules of Practice." The General and Special Rules provide that the General Rules apply "to the procedures of all employee boards" and in all proceedings "unless otherwise directed." (App. A, pp. 21, 22). Thus, the applicable Rule is 49 C.F.R. 1100.101(g) (App. A, p. 22), which requires filing of a petition where the Appellate Division reverses, changes, or modifies an order of a board of employes. Moreover, the term "officer" as used in subsection 101(a)(2) is not limited to officers holding oral hearings as the court seems to suggest, but is defined by 49 C.F.R. 1100.5(f) to include "a Commission, a board of employees * * *, an examiner, or special board composed of State representatives (called a "joint board") in this part * * *."

diction to issue a temporary restraint to prevent irreparable injury pending final agency action. *Pacific Inland Tariff Bureau* v. *United States,* 129 F. Supp. 472, 478 (D. Oregon, 1955); *Covington* v. *Schwartz,* 230 F. Supp. 249, modified on other grounds, 341 F. 2d 537, 539 (9th Cir., 1965); *Cantlay & Tonzola* v. *United States,* 115 F. Supp. 72, 76 (S.D. Calif., 1953). Usually in such circumstances, the reviewing court will hold the judicial action in abeyance. While the agency should, as here (A.F.L. J.S. App. A, pp. 4a-5a), notify the court of reopening and request a stay, it is not essential to seek court consent to reopen in the absence of prejudice to the parties. *Anchor Line Ltd.* v. *F.M.C.,* 299 F. 2d 124, 125 (D.C. Cir. 1962). Here, no prejudice occurred. The Commission reopened to receive evidence relevant to the deficiencies found to exist by the court below in restraining the initial grant of authority. [A.F.L. J.S. App. F, p. 39a]. No one has a vested right to preserve an error if the agency wishes to correct the error and there is an opportunity for judicial review of its final corrective action. *Wrather-Alvarez Broadcasting* v. *F.C.C.,* 248 F. 2d 646, 648 (D.C. Cir., 1957); and *Frontier Airlines, Inc.* v. *C.A.B.,* 259 F. 2d 808 (D.C. Cir, 1958). Self cor-

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[A.F.L. J.S. App. A, p. 9a]. Reliance by the district court on *Transamerican Freight Lines* v. *United States*, 258 F. Supp. 910, 915 (D. Del., 1966) is inapposite. The Commission has declined to follow the *obiter dictum* of that decision, which was expressed *sua sponte* and totally unnecessary to the holding of the case, and has been sustained in doing so in *Resort Bus Lines* v. *United States*, 264 F. Supp. 742, 745 (S.D. N.Y., 1967). Thus, the judgment below presents another conflict on an issue of law among the lower Federal courts.

rection of its own errors without the necessity for a reviewing court to remand an order to the Commission for this purpose should be the aim of a well-run administrative agency. *Alamo Exp., Inc.* v. *United States,* 239 F. Supp. 694, 698 (W.D. Tex., 1965), aff'd 382 U.S. 19 (1965).

In the circumstances of this case, the court below erred in limiting the Commission's statutory authority to reopen the proceeding in order to provide a more detailed rationale for its decision in light of additional evidence received.

CONCLUSION

The district court has interpreted Sections 17(7) and 210a(a) and the regulations implementing those provisions so as to seriously impair the Commission's power effectively to dispose of applications for temporary authority. This appeal thus presents substantial questions in the administration of the Interstate Commerce Act and probable jurisdiction should be noted.

Respectfully submitted.

ROBERT W. GINNANE,
General Counsel.

ARTHUR J. CERRA,
Associate General Counsel,
Interstate Commerce Commission.

JULY 1969.

APPENDIX A

The Statutes

49 U.S.C. 17(7) provides:

> If after rehearing, reargument, or reconsideration of a decision, order, or requirement of a division, an individual Commissioner, or board it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission or appellate division may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after rehearing, reargument, or reconsideration, reversing, changing, or modifying the original determination shall be subject to the same provisions with respect to rehearing, reargument, or reconsideration as an original order.

The Temporary Authority Rules

49 C.F.R. 1131.2(c) provides:

> *Supporting statements.* Each application for temporary authority must be accompanied by a supporting statement(s) designed to establish an immediate and urgent need for service which cannot be met by existing carriers, except that when the Department of Defense is the shipper such support may be furnished directly to the Temporary Authorities Board by the Washington office of that Department. Each such shippers' statement, except those submitted by the Department of Defense must contain a certification of its accuracy and must be signed by the person (or an authorized representative thereof) having such immediate and urgent need for motor carrier service. Any such

supporting statement must contain at least the following information:

(1) Description of the specific commodity or commodities to be transported (where the transportation of property is involved).

(2) Points or areas to, from, or between which such commodities or passengers are to be transported. (If service is needed to or from a territory or area rather than a specific point or points, clearly describe such territory or area and furnish evidence of a broad need to justify the territorial grant of authority requested.)

(3) Volume of traffic involved, frequency of movement, and how transported now and in the past.

(4) How soon the service must be provided and the reasons for such time limit.

(5) How long the need for such service likely will continue, and whether the persons supporting the temporary application will support a permanent service application.

(6) Recital of the consequences if service is not made available.

(7) The circumstances which created an immediate and urgent need for the requested service.

(8) Whether efforts have been made to obtain the service from existing motor, rail, or water carriers, and the dates and results of such efforts.

(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal.

(10) Name and address of motor carrier who will provide service and is filing application for temporary authority.

(11) If the person supporting the application has supported any prior application for permanent or temporary authority covering all or any part of the desired service, give the car-

rier's name, address, and motor carrier docket number, if known, and state whether such application was granted or denied and the date of such action, if known.

49 C.F.R. 1131.4(b)(4) provides:

Single-line service. Generally, the desire of a shipper for single-line service in lieu of existing interchange or connecting-carrier service will not warrant a grant of temporary authority. A grant of temporary authority to effectuate single-line service will be authorized only when it is clearly established that the carriers providing multiple-line service are not capable of, or have failed in, meeting the reasonable immediate and urgent needs of shippers or receivers between the points or territories and in respect of the commodity or commodities involved.

49 C.F.R. 1131.6 (a) and (c) provide:

(a) *Petitions for reconsideration.* Pursuant to and in accordance with the Commission's General and Special Rules of Practice, petitions for reconsideration of orders of (1) the Temporary Authorities Board, and (2) Division 1 initially granting or denying temporary authority in proceedings not subject to prior determination by the Temporary Authorities Board, may be filed by any interested person.

(c) *Petitions for reconsideration.* The filing of a petition for reconsideration of an order of Division 1 or the Temporary Authorities Board does not have the effect of automatically staying such order, and the grantee carrier may conduct the operations authorized by such order upon compliance with its tariff, insurance, and other requirements for the duration of the temporary authority, or until otherwise ordered.

RULES OF PRACTICE

49 C.F.R. 1100.1 provides:

SCOPE OF RULES (RULE 1)

The rules in this part govern procedure before the Interstate Commerce Commission in proceedings under the Interstate Commerce Act and related acts, unless otherwise directed by the Commission in any proceeding.

49 C.F.R. 1100.5(f) provides:

> The term "officer," except as a different meaning is indicated in Rules 17(b), 57 to 66, inclusive, 71(a) and 78 (civil and corporate functionaries), includes: (1) a Commissioner, a board of employees (called an "employee board" in this part), an examiner, or special board composed of State representatives (called a "joint board" in this part), to which a proceeding (called "referred matter" in this part) is by order assigned or referred for hearing, consideration, or recommendation of an appropriate order thereon pursuant to provisions of law;[1] and (2) a Commissioner, an examiner, or other Commission employee before whom, without entry of an order of reference, a proceeding is assigned for hearing. The term "board" means either an employee board or a joint board as the context requires.

49 C.F.R. 1100.101(g) provides:

> *Petitions for reconsideration of appellate division decisions on review of board decisions.* When an appellate division has denied a petition seeking a reversal, change, or modification of a determination whether original or on review by a board of employees, any further petition for reconsideration by the same party or

[1] Such as sections 17 and 205 of the Interstate Commerce Act.

> parties upon substantially the same grounds will not be entertained. If in the consideration of such a petition, however, by the appellate division, the previous determination of the board of employees has been reversed, changed, or modified, a further petition may be filed by any party to the proceeding adversely affected by the decision of the appellate division, within the time specified in paragraph (e) of this section, and the petition will be considered and disposed of by the same appellate division which passed upon the initial petition.

49 C.F.R. 1100.225 prescribes "Special rules of practice governing the procedure of the Temporary Authorities Board" and other employee boards. In a footnote to the title of these special rules, it is provided that:

> The general rules of practice apply to the procedure of all employee boards except to the extent specifically provided for in Rules 200 and 225.

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